

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL No. 773 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy  
of the judgment ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
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**SHERBANU W/O SULEMAN KARIM KURESHI - Appellant(s)****Versus****STATE OF GUJARAT - Opponent(s)**

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**Appearance :**

MR BIPIN BHATT for Appellant(s) : 1,

MR.A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE C.K.BUCH****Date : 13/12/2006****ORAL JUDGMENT**

Heard learned Counsel, Mr.Bhatt for the  
appellant and learned Addl. Public Prosecutor,  
Mr.A.J.Desai for the respondent-State.

2. The appellant is a lady who has been held guilty for the offence punishable under Section 20 (B) (ii) and (b) of the Narcotics Drugs and Psychotropic Substance Act, (hereinafter referred to as the 'N.D.P.S. Act'). The appellant has challenged the legality and validity of the order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.4, Jamnagar in Special Case No.7 of 2003 on 7<sup>th</sup> April, 2004.

2.1 It is the case of the prosecution that on a search being carried out on 22<sup>nd</sup> May, 2003 at about 1:20 a.m., the appellant was found in conscious possession of *muddamal charas* of quantity of about 950 grams at the premises bearing Flat No.1, Bhagyalaxmi Apartment, Near Patel Vadi B/h.T.B.Hospital of City Jamnagar. It is further the case of the prosecution that house was searched in the presence of Panchas and the appellant was only person who was present in the house at the time commission of raid. The *muddamal charas* was found from a tin-pot and the same was weighed, sealed and recovered by the Raiding Party in presence of the

Panchas. It is alleged that this raid was carried out on the secret information given by Head Constable, Rambhai Vashrambhai.

3. The learned Judge after appreciating the oral as well as documentary evidence including the Panchnama as well as Report of F.S.L. and the depositions Police Personnel who were the members of the Raiding Party held that the appellant-accused was found guilty with the offences with which she was charged and passed the order conviction and sentence as stated above.

4. Learned Advocate, Mr.Bhatt, has taken me through the relevant parts of the evidence and reasons assigned by the learned trial Judge. The backbone of the submission of Mr.Bhatt is that the appellant-accused has already undergone the substantive sentence imposed by the trial Court. The appellant came out of the jail on completion of the substantive sentence of three years and after making payment of amount of fine of Rs.1 Lacs, otherwise she could have remained in jail for a further period of one year.

The learned trial Judge while imposing the sentence has considered that the accused is a lady of about 55 years but for no good reason the maximum fine of Rs.1 Lac was imposed and that punishment of fine of Rs.1 Lacs at least should be held to be harsh and excessive punishment and therefore he may be heard on the adequacy of the point of punishment. I have considered the submissions made on this point.

4.1 Undisputedly, the accused was not found in possession of the *muddamal charas* of commercial quantity and therefore the learned trial Judge ought to have considered the totality of the facts placed by the prosecution. Even as per the papers of the charge-sheet, as she was the only member present in the flat, she has been linked with the crime. She may be the victim of wrong committed by somebody. As it was not possible for her to pay amount of Rs.1 Lac for long period of three years and therefore she was compelled to remain in jail otherwise by paying the amount of fine, probably she might have prayed for bail pending the hearing and final disposal of the appeal.

5. The substantive sentence imposed in such a case is only relevant factor; unless it is found by the Court that the accused was victimizing the innocent people in selling and indulging in illegal trafficking of the substance. The maximum fine should not be imposed that too in a case of female accused because in all facts situation in a male dominated society, the females are dependent on the male members of the family and / or society. The learned Counsel for the appellant has instructions to argue on the point of harshness of punishment and the appellant is not serious qua the conviction recorded by the trial Court as she has already undergone the substantive sentence.

6. It is submitted by Mr.Desai, learned A.P.P., that it was possible for the Court to impose any amount of fine upto Rs.1 Lacs. The maximum punishment prescribed for the offending act is of 10 years. When the learned trial Judge found that considering the social responsibility of the accused and her status in the family, three years imprisonment would

be adequate and therefore the Court could have thought on the point of imposing sentence of fine of any amount upto Rs.1 Lacs. The sum and substance of the submission of Mr.Desai is that if the Court thinks that the amount of fine imposed by the trial Court being harsh, then it should not be reduced below Rs.50,000/-

7. The Court is of the view that there is ample force in submission made by Mr.Bhatt and looking to the totality and circumstances emerging from the record vis-a-vis the status of the accused and she being a lady dependent financially on the male members, being a widow, fine of Rs.50,000/- according to me would have been adequate sentence so far as amount of fine is concerned.

8. The Court is not supposed to consider the say of Mr.Bhatt that i) she has paid the amount of fine, only with a view to get out of the jail so that she can attend her social obligations by borrowing money from the close relatives otherwise she could not have paid, or ii) If she really could have earned

money in indulging such civil activities, she could have paid the amount of fine forthwith on the date of conviction and could have prayed for bail before this Hon'ble Court at the time of admission of the appeal.

9. The Court is not concerned with the source of fund on this aspect. The Court is supposed to decide objectively the quantum of punishment and if it is found that imposition of fine of Rs.1 Lacs can be said to be harsh or more adequate punishment then the amount of fine can be reduced. Ultimately, the sentence imposed by the Court takes message to the Society and wrong doer and element of deterrence which is required to be pressing in the quantum of punishment. As per the penology, the amount of Rs.50,000/- would have carried the same message in the society, because there is some value of Rs.50,000/- in the society even today. After placing reliance on the decision in case of **Ramakant Gopalsaran Shahu Vs. State of Gujarat, reported in 2005 (2) G.L.R. 1045** wherein it is rightly argued that substantive sentence also can be reduced in a given case. The fine is also a sentence and

considering the scheme of Section 20 and the word used "may" the Court can reduce the amount of fine imposed by the trial Court. According to Mr.Bhatt, the appellant would feel satisfied if the amount of fine is reduced to Rs.50,000/-.

10. The submission of Mr.Bhatt is accepted and it is held that punishment of imposition of fine of Rs.1 Lacs is found to be harsh and therefore it is required to be reduced.

11. In the result, present appeal stands partly allowed. The judgment and order of conviction and substantive sentence passed by the learned Additional Sessions Judge, Fast Track Court No.4, Jamnagar in Special Case No.7 of 2003 on 7<sup>th</sup> April, 2004 is hereby confirmed.

11.1 The trial Court has imposed the fine of Rs.1,00,000/- . However, the sentence of imposition of fine is hereby altered. Instead of Rs.1,00,000/- imposed the amount of fine is reduced to Rs.50,000/- . In case the accused-appellant has deposited the full amount of fine before the trial Court, it is hereby

ordered that after deducting Rs.50,000/- as against the amount of fine, rest of the amount shall be refunded to appellant-accused on proper identification.

**(C.K.BUCH, J.)**

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